insured while in good health was unnecessary. *Lathrop* v. *Modern Woodmen of America* (Or. 1912) 126 Pac. 1002, overruling dicta to the contrary in the same case in 56 Or. 440, 106 Pac. 328, 109 Pac. 81.

The determination of the exact moment when a contract of a mutual benefit company becomes binding is often a serious practical problem in view of the conditions as to delivery found in the modern contract. Formerly, when no conditions appeared at all, if the risk had been accepted by the Head Lodge, the liability was fixed, even if the member died before the benefit certificate was issued. *Bishop* v. *Grand Lodge,* 112 N. Y. 627. While the terms of modern conditions vary greatly, the principal case seems to lay down the true rule, viz.: that these provisions are to assure the parties that the certificate will be delivered through the proper channels, hence if the insured is in good health and has signified his acceptance either expressly or impliedly and has done everything necessary to entitle him to the possession of the certificate, the receipt of the certificate by the local officer will be considered as a delivery to the member. *Lorscher* v. *Sup. Lodge,* 72 Mich. 316; *Wagner* v. *Sup. Lodge,* 128 Mich. 660; *Baldwin* v. *Golden Star Fraternity,* 47 N. J. L. 111; *Pledger* v. *Sov. Camp,* 17 Tex. Civ. App. 18; *O'Neal* v. *Sov. Camp,* 130 Ky. 68. This holds true even when the contract expressly states that such provisions are conditions precedent, *Sov. Camp.* v. *Brown* (Tex. 1905) 88 S. W. 372; *Sov. Camp* v. *Dees,* 45 Tex. Civ. App. 318. It has even been held that the condition that the member shall be in good health can be waived by the local clerk, *Sov. Camp* v. *Carrington,* 41 Tex. Civ. App. 29, 90 S. W. 921. Such conditions have no application to charter members of the local organizations, *Tracy* v. *Sup. Court of Honor* (Neb. 1903) 93 N. W. 702; affirmed; 96 N. W. 1007. Another line of cases not always clearly distinguished in the decisions from the above cases, but which plainly belong in a different class, are those where some condition precedent is unperformed such as the payment of advance assessments, *Wilcox* v. *Sov Camp,* 76 Mo. App. 573; *Nat'l Asso.* v. *Bratcher,* 65 Neb. 378; *Mich. Mut. Life Ins. Co.* v. *Thompson,* 44 Ind. App. 180, 86 N. E. 503; or initiation, *McWilliams* v. *M. W. A.* (Tex. Civ. App. 1911) 142 S. W. 641; *Loyd* v. *M. W. A.* 113 Mo. App. 19, 87 S. W. 530; *Louden* v. *M. B. of A.,* 107 Minn. 12, 119 N. W. 425; or sickness of the member before the Benefit Certificate was issued by the Head Lodge, *Roblee* v. *Masonic Life Asso.,* 77 N. Y. Suppl. 1098; *Alexander* v. *M. O. W.,* 161 Ala. 561, 49 So. 883; *Mich. Mut. Life Ins. Co.* v. *Thompson, supra; McLendon* v. *W. O. W.,* 106 Tenn. 695, 52 L. R. A. 444. In these latter cases the insurer never became subject to liability.

INTERSTATE COMMERCE—LIABILITY OF INITIAL CARRIER FOR DESTRUCTION OF GOODS IN WAREHOUSE.—Plaintiff company shipped goods by defendant carrier from Paducah, Kentucky, to DeSoto, Georgia, consigned "Our order, notify R E. Howe." Defendant carried the goods to the end of its line and delivered them to the S. Ry. Co., which carried them to DeSoto, placed them in its freight warehouse there November 4, and promptly notified R. E. Howe of their arrival. Howe refused to receive them. No notice of this was given to plaintiff company, and on November 26, the warehouse and its contents

were totally destroyed by fire which occurred without negligence on the part of the railway company. Plaintiff brought this action against defendant as initial carrier of an interstate shipment, under a provision of the act of Congress known as the Carmack Amendment, Act June 29, 1906, c. 1591, § 7, par. 11, 34 Stat. 595 (U. S. Comp Stat. Supp. 1911, p. 1307). This provision makes the carrier taking goods for transportation from one State to another responsible for their loss or injury on connecting lines. *Held,* that it was incumbent on the terminal carrier to notify the shipper of the consignee's refusal to receive the goods, and having failed to do so it was liable for their destruction; that the goods were still in interstate commerce so as to be the subject of federal regulation; that the Carmack Amendment was intended to go as far as Congress had power to regulate the subject, and to make the initial carrier liable for any loss of the property until its interstate shipment was completed; and that therefore, defendant was liable in this suit. *Nashville, C. & St. L. Ry. Co.* v. *Dreyfuss-Weil Co.* (Ky. 1912) 150 S. W. 321.

Although courts disagree as to when a common carrier's liability as carrier ceases, it is well settled that after notice to the consignee and a reasonable time for him to remove the goods, the liability is that of a warehouseman only. *Norway Plains Co.* v .*Boston & M. R. Co.,* 1 Gray (Mass.) 263; *McMillan* v. *M. S. R. Co.,* 16 Mich. 79. But when the consignee refuses to receive the goods, some courts hold that a duty is thereby put upon the carrier to notify the shipper of that fact. *Am. Sugar Refining Co.* v. *McGehee,* 96 Ga. 27; *U. S. Express Co.* v. *Keefer,* 59 Ind. 263. Other courts hold that there is no such duty on the carrier. *Gregg* v. *I. C. Ry. Co.,* 147 Ill. 550; *Kremer* v. *Southern Express Co.,* 46 Tenn. 356. It is submitted that in taking the stricter view of the carrier's duty, and in holding that the statute is intended to apply as far as Congress has power to regulate the subject, the court has gone as far as is possible in making the initial carrier liable.

JUDGMENT — PARTIES CONCLUDED — PERSONS PARTICIPATING IN DEFENCE.— A taxpayer sued the city of Fond du Lac to enjoin the execution by it of a contract for street paving. The attorney of the contractor who was to lay the paving, appeared and participated in the defence in connection with the city's counsel. The attorney made no charges for his services against the city, but he was under a general retainer from the contractor, and the latter paid all his expenses. *Held,* a judgment rendered adjudicating the invalidity of the paving contract, was binding on the contractor, though the latter was not made a party to the suit. *McMillan* v. *Barber Asphalt Paving Co.* (Wis. 1912) 138 N. W. 94.

For a discussion of this case, see NOTE AND COMMENT, p. 238, ante.

MASTER AND SERVANT—COMPENSATION—TIPS.—The plaintiff was employed by the defendant in the latter's shoe-shining shop. He worked under a salary contract and wages agreed upon were paid him. During two years of his service for the defendant, however, he was given tips by customers whose work he had done, and he turned over these tips to the defendant each night.